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4 SELECT COMMITTEE TO INVESTIGATE THE
5 JANUARY 6TH ATTACK ON THE U.S. CAPITOL,
6 U.S. HOUSE OF REPRESENTATIVES,
7 WASHINGTON, D.C.

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11 CONTINUED DEPOSITION OF: JEFFREY CLARK

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14

15 Wednesday, February 2, 2022

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17 Washington, D.C.

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20 The deposition in the above matter was held in room 4480, O'Neill House Office
21 Building, commencing at 12:10 p.m.

22 Present: Representatives Luria, Aguilar, Schiff, Lofgren, Murphy, and Kinzinger.

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2 Appearances:

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5 For the SELECT COMMITTEE TO INVESTIGATE

6 THE JANUARY 6TH ATTACK ON THE U.S. CAPITOL:

7

8 [REDACTED] STAFF ASSOCIATE

9 [REDACTED] RESEARCHER

10 [REDACTED] SENIOR INVESTIGATIVE COUNSEL

11 [REDACTED] CHIEF CLERK

12 [REDACTED] PARLIAMENTARIAN

13 [REDACTED], STAFF ASSOCIATE

14 [REDACTED] SENIOR INVESTIGATIVE COUNSEL AND OF COUNSEL TO THE VICE CHAIR

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17 For THE WITNESS:

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[REDACTED] Good afternoon. This is the deposition of Jeffrey Bossert Clark, conducted by the House Select Committee to Investigate the January 6th Attack on the United States Capitol, pursuant to House Resolution 503.

Mr. Clark, could you please state your full name and spell your name for the record.

The Witness. Full name is Jeffrey Bossert Clark, last name spelled C-l-a-r-k.

[REDACTED] This will be a staff-led deposition, and Members of the House, of course, may choose to also ask questions.

My name is [REDACTED] I am a senior investigative counsel for the committee and also of counsel to the vice chair, Representative Liz Cheney.

With me here today is [REDACTED] a professional staff member, and by video, right now, we have Representative Lofgren and Representative Schiff. It's possible that other members may join us during the course of the deposition. We make an effort to see when they do and announce their presence, but we can't always be certain we'll notice right away.

Could counsel please state their names for the record.

Mr. MacDougald. I am Harry MacDougald, for Mr. Clark.

Mr. Burnham. Good morning. Charley Burnham, on behalf of Mr. Clark.

[REDACTED]. As you can see, there is an official reporter transcribing the record of this deposition. The deposition is also being videotaped, but the court reporter's transcript is the official record of the proceeding.

Mr. Clark, as you know, please wait until each question is completed before you begin your response, and we'll try to wait until your response is complete before we ask our question, to make it easier for the court reporter.

1 As you know, the stenographer cannot record nonverbal responses, such as
2 shaking your head, so it's important that you answer each question with an audible verbal
3 response.

4 We ask that you provide complete answers, based on your best recollection. If
5 the question is not clear, please ask me to clarify it or repeat it. If you don't know the
6 answer, obviously, you can say so.

7 You may only refuse to answer a question to preserve a privilege recognized by
8 the select committee. If you refuse to answer a question based on a privilege, staff may
9 either proceed with the deposition or seek a ruling from the chair on the objection at that
10 time. If the chairman overrules such an objection, either after the objection is made or
11 at the end of the deposition, you'll be required to answer the question.

12 I also want to remind you, as you know, it is unlawful to deliberately provide false
13 information to Congress.

14 Because this is a deposition under oath, would you please stand and raise your
15 right hand and be sworn in.

16 The Reporter. Do you solemnly declare and affirm under the penalty of perjury
17 that the testimony you are about to give will be the truth, the whole truth, and nothing
18 but the truth?

19 The Witness. Yes, so help me God.

20 [REDACTED] Mr. MacDougald, did you want to make a statement before we begin
21 questioning?

22 Mr. MacDougald. I would. Thank you.

23 It is not enough in Washington to merely disagree with someone about policy
24 questions. Instead, they must be destroyed. Those who disagree with Mr. Clark seek
25 his destruction by any means available.

1 On January 5th this year, Attorney General Merrick Garland devoted much of his
2 remarks to condemning violent threats against those serving in government. And I
3 assume, unfortunately, that members of this committee and even its staff have been also
4 subjected to similar threats of violence. And, for that, you have our genuine sympathy.

5 In that regard, being threatened with violence, you have something in common
6 with Mr. Clark. I want to tell you about one threat in particular. A caller left him a
7 voicemail inviting him to the Pine Barrens in New Jersey to meet with him so that he
8 could be chopped into pieces that would fit into a bucket that could then be gotten rid of
9 so that Mr. Clark's children would be left fatherless.

10 The committee should be embarrassed by its long train of abuses of Mr. Clark and
11 his constitutional rights. The chairman's statement on the Rachel Maddow Show that
12 Mr. Clark must be guilty of a crime because he invoked his Fifth Amendment rights was
13 especially outrageous.

14 Representative Perlmutter of the Rules Committee accused Mr. Clark of treason
15 and went out of his way to mention that it's punishable by death. Basically, he's like the
16 guy that left the voicemail for Mr. Clark. My point is that this whole process has gone
17 off the rails. People have lost their minds.

18 Before we begin, I want to quickly summarize some of our legal arguments about
19 this committee and about this deposition. The committee is legally defective in its
20 composition and in its deeds for three fundamental reasons:

21 First, the composition and membership are not in compliance with its enabling
22 resolution, House Resolution 503. Therefore, it cannot properly do business of any kind.
23 Now, I realize that so far that argument has been rejected in court on the theory that
24 your rules mean whatever you or the Speaker says they mean. But all that does is
25 perfect a due process violation. If the rules mean whatever you say they mean on any

1 given day, a Red Queen come to life, then there are no rules, and it's purely arbitrary and
2 capricious. Either way, the committee is proceeding unlawfully. So the rulings you've
3 gotten so far on that topic are unlikely to be the last word.

4 Second, the committee has no properly constituted or designated ranking
5 minority member. Therefore, it cannot use deposition authority under either its own
6 enabling resolution or the House rules for the use of deposition authority, and no one can
7 be convicted of contempt for refusing to testify in deposition.

8 Third, counsel for the holder of the executive privileges and attorney-client
9 privileges we have asserted is not allowed by your rules to be present to protect their
10 interests. That is another unlawful element among many in how the committee is
11 proceeding. That topic is covered in the letter I've given you today.

12 Representative Cheney said on one of the Sunday shows that her goal was to bar
13 President Trump from ever holding office again, inarguably a purely political objective.

14 In its Trump derangement, the committee has abused its authority to a greater
15 extent than any congressional committee other than the House Un-American Activities
16 Committee. You are railroading Mr. Clark, publicly abusing him and threatening him
17 with criminal prosecution on a completely spurious legal foundation. This would be
18 unacceptable even if it were a proper exercise of legislative authority, which it is not.
19 But this crusade against Mr. Clark is the equivalent of a bill of attainder and, thus, a
20 violation of separation of powers.

21 For example, one of the topics on which you intend to question Mr. Clark is
22 whether and to what extent President Trump considered appointing him to be Attorney
23 General. Despite rumors that the Department of Justice is an independent agency, the
24 President has the exclusive authority to appoint the Attorney General or to fire an
25 existing Acting Attorney General because it's within the President's exclusive

1 constitutional authority.

2 Because it is a topic on which legislation may not be had, it is not a permissible
3 topic of congressional subpoena or investigation. Therefore, it is not a topic on which
4 Mr. Clark can be prosecuted for contempt. The committee's avowed intent to see Mr.
5 Clark criminally prosecuted for asserting executive privilege on that topic is another item
6 in the long catalog of its abuses against him.

7 The committee has bragged to the media that its strategy in seeking criminal
8 contempt was to intimidate and coerce other witnesses into cooperating. In essence,
9 the committee has drawn up a list of its political enemies and is hounding them with what
10 you contend is limitless subpoena power that is not subject to legal challenge or judicial
11 review in any forum. What could be more un-American than that?

12 But what makes it all the more improper in the case of Mr. Clark is that he has
13 absolutely zero connection to the events of January 6th. He had no involvement in any
14 aspect of January 6th, and nobody claims that he did.

15 So the imagined nexus between January 6th and Mr. Clark's election-related work
16 in the Department of Justice and his interactions with President Trump is a paranoid
17 fantasy. Everything that Mr. Clark is reported to have done or not done related to the
18 election was privileged and confidential and was completely unknown to the public on
19 January 6th.

20 That irretrievably destroys the causal connection between Mr. Clark and January
21 6th, and it also destroys the relevance of the list of topics you want to pursue with Mr.
22 Clark to anything that's actually within the committee's jurisdiction, even under your
23 extravagant conceptions of relevance and jurisdiction.

24 We didn't learn of the topics on which you intended to question him until
25 November 23rd, when we reviewed the transcript, weeks after the first sitting on

1 November 5th. I'm not a D.C. lawyer, but I have talked to a few, and it's my
2 understanding that it's a longtime norm that executive branch officials get the benefit of
3 advance discussions and negotiations about the scope of the topics that are going to be
4 covered. But at no point would the committee ever agree to negotiate in the slightest
5 with us about the topics for Mr. Clark.

6 The committee is abusing Mr. Clark over what amounts to a thought crime, even if
7 one assumes that the leaks to The New York Times are accurate or that the one-sided
8 testimony given to other committees of Congress are totally accurate and provide all
9 necessary context. And the committee is doing all that about a privileged and
10 confidential internal legal deliberation about a letter that was never sent, an option that
11 was rejected, and an action that was never taken.

12 You have also questioned the sincerity and legitimacy of Mr. Clark's assertion of
13 his Fifth Amendment rights. But, as I have noted already, the chairman went on
14 television in early December and said that Mr. Clark's invocation of his Fifth Amendment
15 rights was an admission of guilt. Even Rachel Maddow was taken aback at that
16 statement. You could see it in her face.

17 The chairman has also said that the committee will determine the guilt or
18 innocence of the people it's looking at. In one fell swoop, the chairman has violated the
19 Bill of Attainder Clause, the Due Process Clause, and separation of powers, a triple play of
20 unconstitutionality. It's a mighty peculiar approach to saving our democracy.

21 Former Senator Claire McCaskill, appearing on television with Congressman Schiff
22 on December 5th, urged that Mr. Clark be criminally prosecuted as soon as possible and
23 complained that it hadn't been done sooner.

24 Other Members of the House and Senate and the committee's political allies are
25 ardently and publicly urging that Mr. Clark be prosecuted. And we had Representative

1 Perlmutter nattering about treason and the death penalty. Eminent law professors have
2 written and published supposed roadmaps for criminal investigation and prosecution that
3 are clearly directed at Mr. Clark. And, of course, the committee has already voted to
4 refer him for prosecution for political contempt -- for criminal contempt.

5 So it's not that we're paranoid or that our concerns are trifling or insubstantial.
6 The committee and its allies really are out to get Mr. Clark. There's obvious legitimate
7 and well-founded concern that the committee's efforts and those of its political allies to
8 string up Mr. Clark will continue.

9 A serious and real concern is present, not because he did anything wrong, but
10 because there is a moral panic and a lynch mob coming after him, and the committee is
11 right out in front of that mob, egging them on.

12 We are not required to explain in this setting the exact chain of reasoning by
13 which we arrived at any conclusion we reach today on a question-by-question basis when
14 we instruct or advise Mr. Clark in this second deposition. That would eviscerate the very
15 protection we are claiming.

16 We do not waive. We explicitly reserve all other objections to the defective
17 nature of the committee, the defective nature of its attempts to use deposition authority,
18 the irrelevance of the topics it wants to pursue with Mr. Clark, its abuse of his
19 constitutional rights and all of the other legal and constitutional arguments we have set
20 forth in our correspondence with the committee, including and especially the many facets
21 of executive privilege. And we reserve any other arguments or objections that might be
22 appropriate at the appropriate time.

23 ██████████ Mr. MacDougald, your statement is now part of the record, and if
24 there is nothing else, I'll start questions.

25 The Witness. I'd like to say something just briefly, ██████████, if I could.

1 [REDACTED] Yes.

2 The Witness. I think that this is exclusively a political inquiry, not a legislative
3 one. It also has I think pretenses and an underlying purpose of invading the executive
4 sphere, in terms of law enforcement. And, you know, it's a political product I think that
5 is exclusively or almost exclusively coming from the Democrat Party. And it's a party
6 that my father would not recognize and I think many people of his generation would not
7 recognize.

8 My dad was a truck driver who never graduated from high school. He was a
9 lifelong Democrat and a Catholic. My mom was a lifelong Republican and a Protestant.
10 I wound up as the blend of the two, a Catholic conservative Republican.

11 But, you know, I would come over time, actually, to appreciate many of the
12 positions of my father in what were very lively political and theological debates around
13 our coffee table and around our dinner table.

14 And so, you know, I think that, you know, my dad -- there's that expression of
15 rolling over in your grave. I think that, you know, knock on wood -- and more than that,
16 because my dad was a very dedicated, prayerful man. I know that he's in heaven. So
17 there's no rolling in the grave, but the expression still counts.

18 And I think that's where we've come today, in terms of the modern political divide
19 and where one party is headed. And I just -- I find it -- I find it very disappointing. I'll
20 shave off, you know, rhetoric. I find it very disappointing that that's where we are
21 today.

22 And that's it, [REDACTED]

23 [REDACTED] Okay. And your statement also is in the record.

24 Is there anything else you want to add before we get started with questions?

25 Mr. Burnham. Nothing from me.

1 Mr. MacDougald. Nothing.

2 EXAMINATION

3 BY [REDACTED]

4 Q Mr. Clark, on January 6, 2021, were you an official at the Department of
5 Justice?

6 [Discussion off the record.]

7 The Witness. On advice of counsel, I invoke my Fifth Amendment right not to be
8 compelled to be a witness against myself.

9 And for purposes of shorthand, I hope you'll agree that if there are other
10 questions that I do the same on that I can simply say "Fifth."

11 BY [REDACTED]

12 Q To save time, you can certainly do that. There may be times where I'm
13 going to want to just clarify for the record that you're invoking your Fifth Amendment
14 right against self-incrimination or you're invoking your Fifth Amendment right not to be
15 compelled in a criminal case to be a witness against yourself, which is the language from
16 the Constitution itself. But I agree you don't have to restate at any length the nature of
17 your invocation.

18 A Well, [REDACTED], I will push back at least to some extent on that and note for you
19 that the text of the Fifth Amendment is that no person shall be compelled in any criminal
20 case to be a witness against himself. And so the incrimination language is not in the text
21 of the Fifth Amendment.

22 Q So you will not have to use that language if you don't want to. So that will
23 be fine.

24 So I guess just to go back to the question, I think I understand you've invoked your
25 Fifth Amendment right with regard to the question of whether you were an official at the

1 Department of Justice on January 6, 2021.

2 A Correct.

3 Q And, on January 6, 2021, were you the Assistant Attorney General for the
4 Environment and Natural Resources Division?

5 A Fifth.

6 Q On January 6, 2021, were you also Acting Assistant Attorney General for the
7 Civil Division?

8 A Fifth.

9 Q On January 6, 2021, did you go into the Department of Justice headquarters?

10 A Can you restate that?

11 Q Yes. On January 6, 2021, did you go into the Department of Justice
12 headquarters in Washington, D.C.?

13 A Fifth.

14 Q On January 6, 2021, did you have any communications with the President of
15 the United States?

16 A On January 6th?

17 Q On January 6th.

18 A Fifth.

19 Q On January 6, 2021, did you have any conversations with White House staff?

20 A Fifth.

21 Q On January 6, 2021, did you have any communications with anyone involved
22 in the protests?

23 A Fifth.

24 Q On January 6, 2021, did you have any communications with anyone who was
25 at the Capitol?

1 A Fifth.

2 Q Mr. Clark, if you'll look at exhibit 1, it's a subpoena from this committee,
3 dated October 13, 2021. Do you understand you're appearing here today pursuant to
4 that subpoena?

5 A I think the subpoena speaks for itself, [REDACTED]

6 Q And, Mr. Clark, have you produced any documents to this committee
7 pursuant to this subpoena?

8 A Fifth.

9 Q Did you or your counsel search to see whether you had custody or control of
10 any documents that would be responsive to this subpoena?

11 A Fifth.

12 Q And, just so I understand, with regard to the Fifth Amendment, are you
13 asserting that the act of producing any documents, as opposed to the content of the
14 documents, would violate your Fifth Amendment right?

15 Mr. Burnham. If I could answer, that's our position. I can't have him getting
16 into an explanation. But, yes, that's our position.

17 Mr. [REDACTED] Your position is that the act of producing the documents could
18 violate the Fifth Amendment right, as opposed to just the content of the documents?

19 Mr. Burnham. Yes, it is.

20 Mr. [REDACTED] And have you provided a privilege log regarding any documents
21 you're withholding?

22 Mr. Burnham. Under applicable case law, the privilege log itself would waive the
23 act of production. We've cited cases. So that's why we haven't produced a log.

24

BY [REDACTED]

25 Q Mr. Clark, when did you first talk directly with President Trump?


1 A Fifth.

2 Q And, Mr. Clark, just so I understand, it's your position that telling this
3 committee when you first talked directly to President Trump would cause you to be
4 compelled in a criminal case to be a witness against yourself?

5 A So --

6 Mr. Burnham. That's our position, yes.

7 The Witness. Yeah. Fifth, but I think the reason why I looked at Charley is
8 because I think that's at some level a mixed question of fact and law. But I invoke the
9 Fifth.

10  I just want to clarify that you're not invoking the Fifth because of any
11 potential civil liability, which would not be a basis for invoking the Fifth. It would have
12 to be that to answer the question could cause you to be compelled in a criminal case to
13 be a witness against yourself.

14 Mr. Burnham. Yes, for reasons including the ones Mr. MacDougald laid out in a
15 prior correspondence, we think there's more than adequate basis for the Fifth, for
16 reasonable fear of criminal prosecution.

17

BY 

18 Q And, Mr. Clark, did you have any direct interaction with the President of the
19 United States, President Trump, that is, regarding your work as head of the Environment
20 and Natural Resources Division at the Department of Justice?

21 A Fifth.

22 Q Did you have any interaction with President Trump in your capacity as Acting
23 Assistant Attorney General for the Civil Division?

24 A Fifth.

25 Q Mr. Clark, do you know Representative Scott Perry?

1 A Fifth.

2 Q Mr. Clark, did Representative Scott Perry introduce you, either directly or
3 indirectly, to President Trump?

4 A Fifth.

5 Q Mr. Clark, how did you first come to meet Mark Meadows, chief of staff to
6 President Trump?

7 A Fifth.

8 Q Mr. Clark, did Mark Meadows facilitate an introduction for you to the
9 President of the United States?

10 A Fifth.

11 Q Mr. Clark, did you discuss with President Trump allegations of fraud in the
12 2020 election?

13 A Fifth.

14 Q Mr. Clark, did you discuss the possibility -- let me rephrase that.

15 Mr. Clark, did you discuss with President Trump the possibility that President
16 Trump would appoint you to be Acting Attorney General of the United States?

17 A There are a lot of clauses in there. Maybe you could reframe it.

18 Q Sure. I'll restate it.

19 Mr. Clark, did you discuss with President Trump the possibility that President
20 Trump would appoint you to be Acting Attorney General of the United States?

21 A Fifth. Fifth, and I would also note that there's a separation of powers issue
22 in the presumptions behind that question.

23 Q Did you notify anyone else at the Department of Justice about your
24 discussions with President Trump?

25 A Fifth.

1 Q Mr. Clark, if you could look at exhibit 3, which is an email from Rich
2 Donoghue, the signature block indicates he was Principal Associate Deputy Attorney
3 General, dated November 11, 2020, so like 8 days after the Presidential election, sent to
4 you and several other people who appear to be, I'll call them various component heads at
5 the Department of Justice. And the subject is "Contact Policies."

6 And attached to that email -- well, that email is basically forwarding to the
7 recipients two documents: One is a memorandum for heads of Department
8 components and all United States Attorneys regarding communications with the White
9 House and Congress; and the second document is a White House document from Donald
10 F. McGahn II, then-counsel to the President, and the subject is "Communications
11 Restrictions with Personnel at the Department of Justice."

12 Mr. Clark, do you remember receiving these two documents and the email from
13 Mr. Donoghue?

14 A Fifth.

15 Mr. MacDougald. [REDACTED] I would also like to say for the record that we are
16 preserving for possible future challenge the question of whether those policies are
17 unconstitutional as a violation of Article II.

18 The Constitution contemplates unfettered access by the President to subordinate
19 officials in the executive branch, of which he is the sole head. This constitutional
20 authority could never be constrained by a mere policy memo from anyone subordinate to
21 the President.

22 Mr. Schiff. Counsel, may I interject a question? This is Adam Schiff.

23 [REDACTED] Of course. Yes.

24 Mr. Schiff. Mr. Clark, for most of the questions, if not all of them, you've invoked
25 your Fifth Amendment right against self-incrimination. With respect to a few of the

1 questions, though, you mentioned other objections, such as you did with respect to one
2 of the questions just a moment ago, the separation of powers concern.

3 My question is, when you're asserting the Fifth Amendment and you're not raising
4 any other objection, is your sole objection to the question based on your Fifth
5 Amendment right not to incriminate yourself?

6 Mr. MacDougald. Self-evidently, Congressman, we have expressly, explicitly, and
7 repeatedly reserved all other objections, including executive privilege, separation of
8 powers, and so on.

9 The Witness. So -- to amplify on that slightly, Congressman, so no. You know,
10 you should not assume in expressio unius fashion, you know, that if I don't make an
11 additional objection in an area where I have taken the Fifth, asserted my constitutional
12 rights under the Fifth Amendment, that that is the only objection. We have all of these
13 standing objections.

14 So the reason why Mr. MacDougald raised this particular objection and why I
15 pointed to the separation of powers on a particular question is just that some of the
16 questions that you're ask -- you're posing are not things that we've exchanged letters
17 about before and that we have standing objections on that Mr. MacDougald incorporated
18 by reference at the start of the proceeding, you know, to cover the whole proceeding.

19 So, just for clarity's sake, if there are particular points about some of your
20 questions, we just wanted to make sure that we made clear that there are other
21 problems with them, and you've pointed to both of the examples where we've done that
22 so far.

23 Mr. Schiff. Mr. Clark, are you willing to, with respect to questions, identify on
24 what basis, in addition to the Fifth Amendment, you wish to assert a right to refuse to
25 respond?

1 The Witness. Congressman Schiff, I think I've covered that already. That we
2 have a group of standing objections that we are not relinquishing and that Mr.
3 MacDougald had indicated in his opening statement we're standing on.

4 And then, as to, you know, particular questions where, you know, based,
5 obviously, in the moment and having, you know, presence of mind when it's raised to
6 think that this is something that isn't -- you know, hasn't really been aired sufficiently in
7 prior correspondence between us and the committee, you know, we may refer to other
8 objections just to make sure, out of an abundance of caution, that they're preserved,
9 even though the nature of those objections are, you know, clearly within the scope of
10 what we've been asserting.

11 I mean, you know that a major theme of the correspondence has been the
12 separation of powers and limits on the committee as a result of that. And the Article II
13 point is just an aspect of that that Mr. MacDougald just made.

14 So we don't really need to do this. We're doing it only out of an -- I'm only doing
15 it out of an abundance of caution as to particular questions when those questions have
16 not been, you know, posed and gone back and forth in correspondence before. We
17 think that's sufficient.

18 Mr. Schiff. Mr. Clark, I understand your objection to the composition of the
19 committee, an objection that your counsel I think acknowledged has been rejected by
20 every court that's considered it.

21 I just want to make sure we have a clean record of the basis for which you're
22 objecting to particular questions, but I will leave it to committee counsel how to elucidate
23 what the basis of any objection you have is to a particular question.

24 With that, I'll yield back.

25  Thank you.

1 And I believe Ms. Murphy has also joined us and Mr. Kinzinger has joined us.

2 Do any other members have any questions at this time?

3 Mr. Kinzinger. None from me right now. Thank you.

4

BY [REDACTED]

5 Q Mr. Clark, did you tell Acting Attorney General Jeff Rosen about all of your
6 communications with President Trump?

7 A Fifth.

8 Q Mr. Clark, how many conversations did you have with President Trump?

9 A Fifth. And this is one where it's certainly not necessary to reiterate it, but
10 that's clearly something that's covered by executive privilege and other privileges, as
11 explored in our multiple letters.

12 Q On December 21, 2020, we understand there was a meeting at the White
13 House between President Trump, Vice President Pence, President Trump's legal team and
14 several Republican House Members. Did you attend that meeting?

15 A Fifth.

16 Q Mr. Clark, did you have a call with President Trump on December 23rd or
17 December 24th of 2020?

18 A Fifth.

19 Q Mr. Clark, did you have a conversation with Acting Attorney General Jeff
20 Rosen on December 26, 2020?

21 A Fifth. I'll also use that one as an example to incorporate -- again, purely out
22 of an abundance of caution, not because it's necessary, given the standing objections.
23 But that also goes into, you know, privileges related to the law enforcement privilege.

24 The Witness. And, at this time, actually, Mr. MacDougald, maybe you want to
25 set out the points about the Weinsheimer letter and its limitations.

1 Mr. MacDougald. Right. So the letter on which the committee relies from
2 Bradley Weinsheimer as a waiver of the privilege, executive privilege, by its terms, refers
3 only to House Oversight Committee and Senate Judiciary Committee and not this
4 committee. That's one.

5 Two, it also has a shorter window of time to which it applies, which runs from
6 December 14th to the date of his resignation, January 14. And so there is no waiver
7 from the executive branch of executive privilege with respect to Mr. Clark's testimony
8 before this committee.

9

BY [REDACTED]

10 Q Mr. Clark, did you have any communications with the President of the
11 United States on December 27, 2020?

12 A Fifth.

13 Q Mr. Clark, if you could look at exhibit 4. These are notes from Rich
14 Donoghue from a call that he and Jeff Rosen had with the President of the United States.
15 Mr. Donoghue writes -- find it here. Just to save time, I'm not going to go through point
16 by point throughout the notes.

17 If you'll look at the top of the fifth page --

18 Mr. MacDougald. Is there a Bates number?

19

BY [REDACTED]

20 Q -- for the production -- yes, it's the Bates number ending in 739.

21 A Yes. I'm seeing it.

22 Q Actually, if you look at the very bottom of the page before it, it says:

23 P -- which I believe means the President speaking -- don't expect you to do that. Just say
24 that the election was corrupt and leave the rest to me and to the Republican
25 Congressmen.

1 I understand you were not on this call, but, Mr. Clark, my question to you is, did
2 the President of the United States ever say something along the lines of "just say that the
3 election was corrupt and leave the rest to me and the Republican Congressmen" to you?

4 A Fifth and executive privilege. And this is also probably a good time to just
5 note one other standing objection that we have. So there are various hard copy
6 documents that we were seeking, and I think that I will, you know -- I reserve my rights as
7 to those.

8 But I will just note the curiosity that you have here someone else's hard copy
9 notes. And it took quite a while to secure access to hard copy documents with DOJ,
10 pursuant to DOJ regulations. It's just curious that, you know, there's that difference,
11 just to note that for the record.

12 Q And if you look at the next page, Bates number ending in 740, towards the
13 very bottom of the page, Mr. Donoghue in his notes writes: People tell me Jeff Clark is
14 great and should be -- oh, I think it says: People tell me Jeff Clark is great. I should put
15 him in.

16 And then the next line: People want me to replace DOJ leadership.

17 Mr. Clark, do you know why the President of the United States had heard from
18 people that you were great and that he should put you in?

19 A Fifth. And -- I'll leave it at the Fifth.

20 Q Okay. Mr. Clark, do you know why the President appears to have been
21 saying that people want him to replace the DOJ leadership?

22 A Fifth and calls for speculation.

23 Q Mr. Clark, if you look at exhibit 5, this is an email from you to Jeffrey Rosen
24 and Rich Donoghue, dated December 28, 2020. It says: Jeff and Rich -- and number
25 one -- I'd like to have your authorization to get a classified briefing tomorrow from ODNI

1 led by DNI Ratcliffe on foreign election interference issues.

2 Mr. Clark, why did you request authorization to get a classified briefing the next
3 day from DNI Ratcliffe on foreign election interference issues?

4 A Fifth, executive privilege. And there's one part of the Weinsheimer letter,
5 which I believe you have as exhibit 30 when I flip through -- yes. So that letter also
6 indicates that the Department was itself reserving law enforcement privilege beyond the
7 curiosity of how that contrasts with the position the letter takes concerning President
8 Trump's holding of a privilege.

9 Clearly, when you are asking about internal DOJ discussions, it would seem to be
10 subject to my instruction, even assuming it fully applied to this committee as opposed to
11 the two committees explicitly mentioned, to say that I am not authorized to answer that
12 question.

13 Mr. MacDougald. And there's another point that I would like to make, and
14 maybe this is a little bit early in the progression of your question, but I want to go ahead
15 and get it on the record to preserve it.

16 And that is that DOJ has not allowed Mr. Clark or me or Mr. Burnham to review
17 unredacted relevant documents, and this -- relating to the ODNI line of questioning, and
18 this violates Mr. Clark's rights under the Fifth and Sixth Amendments.

19 Mr. Burnham. Just brief indulgence.

20 [Pause.]

21

BY

22 Q The next sentence you wrote: I can then assess how that relates to
23 activating the IEEPA -- which is I-E-E-P-A -- and 2018 EO powers on such matters, now
24 twice renewed by the President.

25 Mr. Clark, were you at that point considering whether or not the Department of

1 Justice or another Federal agency could seize voting machines from the States?

2 A Fifth.

3 Q The next sentence, you wrote: If you had not seen it, white hat hackers
4 have evidence, in the public domain, that a Dominion machine accessed the internet
5 through a smart thermostat with a net connection trail leading back to China. ODNI may
6 have additional classified evidence.

7 Mr. Clark, what was the evidence that a Dominion machine had accessed the
8 internet through a smart thermostat with a connection trail leading back to China?

9 A Fifth.

10 Q Okay. Mr. Clark, the paragraph starting with the number two says:
11 Attached is a draft letter.

12 There is, in fact, an attachment, which is a draft letter to the Honorable Brian
13 Kemp, the Honorable Dave Ralston, and the Honorable Butch Miller, all Georgia officials.

14 Mr. Clark, did you draft this letter?

15 A Fifth.

16 Q Mr. Clark, did you urge the Acting Attorney General and Mr. Donoghue to
17 send this letter to the Georgia officials?

18 A Fifth and, again, out of an abundance of caution, law enforcement privilege.

19 Q Okay. Mr. Clark, on the second page of the attachment, in the second
20 paragraph, the second sentence then of that paragraph states: The Department
21 believes that in Georgia and several other States, both a slate of electors supporting
22 Joseph R. Biden, Jr. and a separate slate of electors supporting Donald J. Trump gathered
23 on that day at the proper location to cast their ballots and that both sets of those ballots
24 have been transmitted to Washington, D.C., to be opened by the Vice President.

25 Mr. Clark, my first question to you is, were there State authorities that had

1 certified two slates of electors in Georgia?

2 A Fifth. And it's also unclear to me the basis on which you're asking that
3 question, but Fifth.

4 Q Mr. Clark, was it, in fact, the Department of Justice's position that the
5 Georgia legislature should meet in special session to consider evidence of election fraud?

6 A Fifth.

7 Q Mr. Clark, wasn't it, in fact, the Department of Justice's position, as stated by
8 Attorney General Barr, on December 1, 2020, that there was no evidence of widespread
9 election fraud sufficient to have changed the outcome of the 2020 Presidential election?

10 A Fifth.

11 Q Mr. Clark, did you discuss this draft letter to Georgia officials with
12 Representative Scott Perry?

13 A Fifth.

14 Q Did you discuss this draft letter to Georgia officials with the President of the
15 United States?

16 A Fifth and executive privilege, again, just restated for the abundance of
17 caution.

18 Q Mr. Clark, was DOJ employee Ken Klukowski involved in drafting this letter to
19 Georgia officials?

20 A Fifth and executive privilege, again, out of an abundance of caution.

21 Q Mr. Clark, did anybody from the White House or the Trump campaign have
22 any role in drafting or editing this letter?

23 A Fifth.

24 Q Mr. Clark, did anyone review this letter before you sent it to Mr. Rosen and
25 Mr. Donoghue?

1 A Fifth.

2 Q Did you send this letter to anyone other than Mr. Rosen and Mr. Donoghue?

3 A Fifth.

4 Q If you go back to the first page of this exhibit, which is the email that you
5 sent to Mr. Rosen and Mr. Donoghue, under the number two, the second sentence says:
6 The concept is to send it to the Governor, Speaker, and President pro tem of each
7 relevant State to indicate that in light of time urgency and sworn evidence of election
8 irregularities presented to courts and to legislative committees, the legislatures thereof
9 should each assemble and make a decision about elector appointment in light of their
10 deliberations.

11 Mr. Clark, did you propose to the leadership of the Department of Justice that this
12 letter or a similar letter be sent not only to Georgia officials but officials in several other
13 States?

14 A Fifth and law enforcement privilege.

15 The Witness. [REDACTED] would you mind scrolling the Webex so that I can
16 see who is the list on at the moment?

17 [REDACTED] Yes. And I believe Ms. Murphy and Mr. Aguilar have joined us.
18 Thank you for pointing that out.

19 BY [REDACTED]

20 Q Okay. If you look again at the draft letter, in the first paragraph, second
21 sentence says: The Department will update you as we are able on investigatory
22 progress, but, at this time, we have identified significant concerns that may have
23 impacted the outcome of the election in multiple States, including the State of Georgia.

24 Isn't that, in fact, contrary to what Attorney General Barr had said on December 1,
25 2020?

1 A Fifth.

2 Q Mr. Clark, did you have any communications with any Georgia State officials
3 regarding the possibility of the Justice Department sending this letter?

4 A Fifth.

5 Q Mr. Clark, did you have conversations or communications of any kind with
6 any State officials in any State about the possibility of sending a letter similar to this to
7 their States?

8 A Fifth.

9 Q If you look at exhibit 10, and this is an email from Richard Donoghue
10 which -- this is dated December 28, 2020, to you, copying Jeff Rosen, appears to be
11 responding to your email that we just discussed.

12 In the second sentence, he said: That said, there is no chance that I would sign
13 this letter or anything remotely like this.

14 Mr. Clark, did you nonetheless continue to push Mr. Clark and Mr. Rosen to have
15 the Department of Justice send the draft letter?

16 Mr. MacDougald. You mean Mr. Donoghue and Mr. Rosen?

17 [REDACTED] I'm sorry, Mr. Donoghue and Mr. Rosen. Thank you.

18 The Witness. Maybe you should restate that.

19 BY [REDACTED]

20 Q Okay. The second sentence of this email says: That said, there is no
21 chance that I would sign this letter or anything remotely like that.

22 Despite Mr. Donoghue's reaction, Mr. Clark, did you continue to urge
23 Mr. Donoghue and Mr. Rosen to have the Justice Department send that letter?

24 A Fifth.

25 Q In the next sentence, about midway through the sentence, Mr. Donoghue

1 writes: The investigations that I am aware of relate to suspicions of misconduct that are
2 of such a small scale that they simply would not impact the outcome of the Presidential
3 election.

4 Mr. Clark, when you wrote -- Mr. Clark, were you aware that the draft letter you
5 were proposing to have the Justice Department send was inconsistent with the nature of
6 the Justice Department's investigations?

7 A Fifth and reiteration of law enforcement privilege, out of an abundance of
8 caution.

9 Q The next sentence says: AG Barr made that clear to the public only last
10 week, and I am not aware of intervening developments that would change that
11 conclusion.

12 Mr. Clark, were you aware of any intervening developments that would have
13 changed the Department of Justice's position, as stated by Attorney General Barr on
14 December 1st?

15 A Fifth and reiteration of law enforcement privilege, out of an abundance of
16 caution.

17 Q Okay. Then, later in that paragraph, Mr. Donoghue wrote: Despite
18 dramatic claims to the contrary, we have not seen the type of fraud that calls into
19 question the reported and certified results of the election.

20 Mr. Clark, was there any evidence that contradicts Mr. Donoghue's statement that
21 I just read to you?

22 A Fifth and reiteration, out of an abundance of caution, of the law
23 enforcement privilege.

24 Q Okay. The beginning of the next paragraph, Mr. Donoghue writes: More
25 importantly, I do not think the Department's role should include making

1 recommendations to a State legislature about how they should meet their Constitutional
2 obligations to appoint Electors.

3 Mr. Clark, are you aware of any time that the Department of Justice in its history
4 had recommended that a State legislature meet to appoint electors?

5 A Fifth.

6 Q Later, in that same paragraph, Mr. Donoghue wrote: But as I note above,
7 there is no reason to conclude that any State is currently in a situation in which their
8 election has failed to produce a choice.

9 Mr. Clark, was there any State that had failed to produce a choice in the 2020
10 Presidential election?

11 A This is the sentence "but as I note above"?

12 Q Correct.

13 A Could you restate the question again?

14 Q Sure. The sentence Mr. Donoghue wrote says: But as I note above, there
15 is no reason to conclude that any State is currently in a situation in which their election
16 has failed to produce a choice.

17 So my question to you is, are you aware of any State that failed to produce a
18 choice in the 2020 election?

19 A I have to confess first that I think that's a very unclear sentence. And I will
20 invoke the Fifth and, out of an abundance of caution, the law enforcement privilege.

21 Q Later in that same paragraph, Mr. Donoghue wrote: Even if I am incorrect
22 about that, this would be a grave step for the Department to take, and it could have
23 tremendous Constitutional, political, and social ramifications for the country. I do not
24 believe that we could even consider such a proposal without the type of research and
25 discussion that such a momentous step warrants. Obviously, OLC would have to be

1 involved in such discussions.

2 Mr. Clark, what kind of research or discussion were you involved in in preparing
3 the letter to Georgia officials?

4 A Fifth. And, self-evidently, that sentence talks about further deliberations
5 inside the Department and, thus, implicates and is covered by the law enforcement
6 privilege objection that I have been stating, out of an abundance of caution.

7 [REDACTED] Okay. I'm going to pause here to see if any members have
8 questions at this time. I'll keep going then.

9 [REDACTED]

10 Q Okay. If you'll look at exhibit 11, which is a calendar -- and I believe this
11 was Jeff Rosen's calendar -- if you look under December 28, 2020, 6 o'clock to 6:30 p.m.,
12 meeting with AAG Clark, attendees: General Rosen, Richard Donoghue, and AAG Clark.

13 Mr. Clark, did you have a meeting at or around 6 o'clock p.m., on December 28th,
14 with Attorney General -- Acting Attorney General Rosen and Rich Donoghue?

15 A Fifth and restating the law enforcement privilege, out of an abundance of
16 caution.

17 Q And at that meeting at 6 o'clock, did Mr. Donoghue tell you to stay out of
18 election-related matters and to focus on issues and cases within your area of
19 responsibility?

20 A Fifth and restatement of law enforcement privilege, out of an abundance of
21 caution.

22 Q And, at that meeting with Mr. Rosen and Mr. Donoghue, did you say that
23 you had already communicated with President Trump and met with him?

24 A Fifth and executive privilege reiterated, out of an abundance of caution, and
25 the same as to law enforcement privilege.

1 Q And, in that meeting, did Mr. Donoghue tell you that you had violated the
2 Department of Justice's policy on White House contacts?

3 A Fifth and the objections that Mr. MacDougald made about the policy and
4 reiteration of executive privilege, out of an abundance of caution.

5 Q And at that meeting, did you tell Mr. Rosen and Mr. Donoghue that the
6 President was considering making a leadership change at the Department of Justice?

7 A Fifth, executive privilege reiteration, out of an abundance of caution, and the
8 separation of powers/appointments issues that Mr. MacDougald covered in the opening
9 statement as an objection.

10 Q And, Mr. Clark, at that meeting at 6 p.m. on December 28, 2020, did you ask
11 Mr. Rosen and Mr. Donoghue to hold a press conference to announce that there was
12 corruption in the 2020 Presidential election?

13 A Fifth and law enforcement privilege, restated out of an abundance of
14 caution.

15 Q Okay. I'm going to ask you a question about the next day. So Tuesday,
16 December 29, 2020, did you have any communications with the President of the United
17 States that day?

18 A Fifth and reiteration of executive privilege, out of an abundance of caution.

19 Q Okay. If you can look at exhibit 12, an email from Teresa Spence. Who's
20 Teresa Spence?

21 A Fifth.

22 Q Okay. And it's sent to you Tuesday, December 29, 2020, 12:12 p.m.
23 Subject: Caller, Jeffrey Rosen with ODAG -- that's O-D-A-G -- 12:05 p.m. I came to your
24 office to give you the message but you were not in. Upon my return back to the office,
25 the caller was gone.

1 Mr. Clark, did you respond to Mr. Rosen's call?

2 A Fifth.

3 Q Mr. Clark, what did you discuss with Mr. Rosen?

4 A Fifth and, out of an abundance, reiteration of the law enforcement privilege
5 objection.

6 Q Okay. If you look at exhibit 13, this is an email dated, Tuesday, December
7 29, 2020, from Molly Michael to Rich Donoghue, Jeff Wall, and Jeff Rosen. So Mr.
8 Donoghue, Mr. Wall, and Mr. Rosen, as you know, were all at the Department of Justice.
9 As you might know and I will represent to you, Molly Michael was the executive assistant
10 to the President of the United States.

11 She wrote: Good morning, the President asked me to send the attached draft
12 document for your review. I have also shared with Mark Meadows and Pat Cipollone.
13 If you'd like to discuss with POTUS, the best way to reach him in the next few days is
14 through the operators.

15 And then attached is a -- what appears to be a draft bill of complaint to be filed in
16 the United States Supreme Court entitled "United States of America versus
17 Commonwealth of Pennsylvania," et al.

18 Mr. Clark, was this draft bill of complaint forwarded to you?

19 A Fifth.

20 Q Mr. Clark, did you have any involvement in discussions about whether or not
21 the United States should file an original action in the Supreme Court against the States
22 where the Presidential election was contested?

23 A Fifth.

24 Q Mr. Clark, did you --

25 A Fifth. And that one I should also reiterate the law enforcement privilege,

1 out of an abundance of caution objection.

2 Q Mr. Clark, did you discuss with President Trump whether the United States
3 should file an original action case in the Supreme Court?

4 A Fifth and executive privilege by -- out of an abundance of caution objection.

5 Q Did you discuss with Kurt Olsen whether the United States should file an
6 original action in the Supreme Court?

7 A Fifth.

8 Q Did you discuss with Bill Olsen whether the United States should file an
9 original action in the Supreme Court?

10 A Fifth.

11 Q Did you discuss with former North Carolina Supreme Court Justice Mark
12 Martin whether the United States should file an original action case in the Supreme
13 Court?

14 A Fifth.

15 Q Did you discuss with John Eastman whether the United States should file an
16 original action case in the Supreme Court?

17 A Fifth.

18 Q Did you discuss with Sidney Powell, Jenna Ellis, Rudy Giuliani, or Phil Kline
19 whether the United States should file an original action case in the U.S. Supreme Court?

20 A Fifth.

21 Q Did you have any communications with any White House staffers about
22 whether the United States should file an original action case in the U.S. Supreme Court?

23 A Fifth and executive privilege, out of an abundance of caution.

24 Q Okay. If you look at exhibit 14 --

25  I will note that Mrs. Luria has joined us.

1

BY [REDACTED]

2

Q If you look at exhibit 14, this is a calendar entry December 30, 2020, 11:30

3

a.m. to 12 o'clock p.m., Gohmert v. Pence.

4

Mr. Clark, regardless of whether you attended that particular meeting, were you

5

involved in the Department of Justice's representation of Vice President Pence in the

6

Gohmert v. Pence case?

7

A Fifth and reiteration of the law enforcement privilege objection, out of an

8

abundance of caution.

9

Mr. MacDougald. And, for the record, I would like to note that Mr. Clark's name

10

is on the briefing in that case that resulted in the dismissal of that case, and the brief

11

speaks for itself. And maybe we ought to all think for a minute about whether -- what

12

the significance of that is for the theories that you're pursuing against Mr. Clark.

13

[REDACTED] Just to be clear, we're not pursuing theories against Mr. Clark.

14

We're not the Department of Justice. We are simply conducting an investigation.

15

The Witness. [REDACTED], I mean, with all due respect, I have to hop in there and say,

16

you know, that I don't think anyone in the country who's following this at this point

17

believes that, and that's certainly not what all of the members of this committee who

18

regularly appear in the media seem to be saying.

19

I mean, they appear alongside people who call for particular law enforcement

20

consequences. You know, there's the chairman himself saying that the committee

21

would determine guilt or innocence. I could go on with many examples.

22

So I understand that's the committee's position, but, you know, I think that it

23

is -- it's less than gossamer to maintain that position at this point.

24

BY [REDACTED]

25

Q Mr. Clark, on Thursday, December 31, 2020, did you have any

1 communications with the President of the United States?

2 A Fifth and executive privilege, out of an abundance of caution, restating that
3 objection.

4 Q If you look at exhibit 15, this is an email from you to Kate Lair, and by her
5 name it says EOP/WHO. So I'm assuming she was at the White House. Subject: Pat C
6 #, presumably for number sign. You wrote: For Pat I have -- then a phone number
7 redacted -- is that correct? If not, can you send me the correct number. He wants me
8 to call him.

9 So I'm assuming here that the Pat C, given that this is the White House, is White
10 House Counsel Pat Cipollone. Why did Pat Cipollone want you to call him on December
11 31, 2020?

12 A Fifth.

13 Mr. MacDougald. How would he know?

14 BY [REDACTED]:

15 Q Well, the next question is, did you, in fact, talk to Mr. Cipollone that day?

16 A Fifth and executive privilege objection, out of an abundance of caution.

17 Q Okay. And did Mr. Cipollone tell you why he was trying to call you?

18 A Fifth and executive privilege objection, out of an abundance of caution.

19 Q Okay. I'm going to turn your attention now to January 1, 2021. Did you
20 have any communications with the President of the United States that day?

21 A Fifth and preserving, out of an abundance of caution, the executive privilege
22 objection specifically, even though it's not necessary, as noted several times, particularly
23 in my exchange with Representative Schiff.

24 Q If you'll look at exhibit 16, email dated January 1, 2021, from you to Jeff
25 Rosen. It starts off: Jeff, please let me know if there is any progress on timing for the

1 briefing.

2 Is that briefing the one that we previously discussed that you'd request from the
3 Director of National Intelligence?

4 A Fifth, reiterating the law enforcement privilege objection, out of an
5 abundance of caution, and reiterating the objection that the documents that we think
6 you are referring to have not been provided to me or my counsel.

7 Q And did you, in fact, end up having a briefing from the Office of the Director
8 of National Intelligence?

9 A Fifth and law enforcement privilege and executive privilege, out of an
10 abundance of caution, restating those.

11 Q To the extent that you can answer this in an unclassified setting, what did
12 the Office of the Director of National Intelligence tell you about their efforts to determine
13 whether there was any interference in the 2020 Presidential election?

14 A Well, [REDACTED], the Fifth, just to be clear. But, also, I think your question is
15 pregnant with the answer, which is that -- I have no idea what your security clearances
16 are and --

17 Q Everything has to be unclassified in this setting.

18 A I understand. Okay, leave it at the Fifth.

19 Q If you'll look at exhibit 17, an email from you dated January 1, 2021, to
20 Dustin Carmack, C-a-r-m-a-c-k, who my understanding worked at the Office of the DNI.
21 You wrote: Dustin, please call me when you can.

22 Why were you trying to reach Mr. Carmack?

23 A Fifth.

24 Q If you'll look at exhibit 18, an email from Mark Meadows, White House chief
25 of staff, to Jeff Rosen January 1, 2021, 4:13 p.m. Mr. Meadows writes: There have

1 been allegations of signature match anomalies in Fulton County, Georgia. Can you get
2 Jeff Clark to engage on this issue immediately to determine if there is any truth to this
3 allegation.

4 Mr. Clark, did you end up engaging on that issue to determine if there was any
5 truth to the allegation regarding signature match anomalies in Fulton County, Georgia?

6 A Fifth and reiteration, out of an abundance of caution, of the objections on
7 law enforcement privilege and executive privilege.

8 Q Did you discuss this issue with Acting Attorney General Rosen?

9 A Fifth, and reiteration of the law enforcement privilege objection, out of an
10 abundance of caution.

11 Q Did you call U.S. Attorney B.J. Pak regarding this allegation in Georgia?

12 A Fifth and reiteration of law enforcement privilege objection, out of an
13 abundance of caution.

14 Q The New York Times reported that, at some point during the day on January
15 1, 2021, you told Mr. Rosen that you were, quote, going to discuss his strategy with the
16 President early the next week, just before Congress was set to certify Mr. Biden's
17 electoral victory, close quote.

18 Is that report from The New York Times accurate?

19 A Fifth, and I'll refrain from commentary about the New York Times.

20 Q Okay.

21 [REDACTED] I will pause here to see if any members have any questions.

22 Mrs. Luria. I do not at this time. Thank you.

23 BY [REDACTED]

24 Q All right. Let's turn to the next day, Saturday, January 2, 2020. Did you
25 have any communications with the President of the United States that day?

1 A Fifth and reiteration of the executive privilege objection.

2 Q Okay. If you look at exhibit 20, the first email chronologically here, so at
3 the bottom of the page, from Jeff Rosen January 1, 2021, at 8:24 p.m. For some reason,
4 it doesn't show the "to" line, but, based on the fact that the next email chronologically is
5 you responding to him, I assume that it was sent to you. It just says "B.J. Pak cell" and
6 then the number redacted.

7 You wrote back: Thanks.

8 Mr. Rosen then wrote: Were you able to follow up?

9 You then responded: I spoke to the source and am on with the guy who took the
10 video right now. Working on it. More due diligence to do.

11 So my first question is, did you, in fact, end up talking to U.S. Attorney B.J. Pak?

12 A Fifth and reiteration of the law enforcement objection, out of an abundance
13 of caution.

14 Q When you wrote, "I spoke to the source," who was the source?

15 A Fifth and reiteration of the law enforcement privilege, out of an abundance
16 of caution.

17 Q And when you wrote, "Am on with the guy who took the video right now,"
18 what is the video you're referring to?

19 A Fifth and reiteration of the law enforcement objection -- law enforcement
20 privilege objection, out of an abundance of caution.

21 Q Okay. When you wrote, "Working on it. More due diligence to do," did
22 you continue to do more due diligence?

23 A Fifth and, again, reiteration of the law enforcement privilege objection, out
24 of an abundance of caution.

25 Q Okay. It's been widely reported that President Trump had a phone call with

1 the Georgia Secretary of State Brad Raffensperger also on January 2nd. The recording of
2 that has been publicly released. No indication, to my knowledge, that you were on that
3 call.

4 But were you aware in advance that President Trump was going to have a call with
5 Georgia secretary of state Brad Raffensperger?

6 A Fifth.

7 Q Okay. There was also a conference call with Members of Congress on
8 January 2nd. That is, the President had such a call. Were you on that call?

9 A Fifth and reiteration of the -- no, just stand on the Fifth.

10 Q Okay. Did you have another meeting with Jeff Rosen and Jeff -- Donoghue
11 on January 2nd?

12 A Fifth and reiteration of the law enforcement privilege, out of an abundance
13 of caution.

14 Q If you look at exhibit 21, and I can represent to you that these are Rich
15 Donoghue's handwritten notes. At the top, it says: Meeting with DAG and Jeff Clark,
16 sixth floor. Over on the left, it says: Acknowledges that he did not call B.J. Pak, as he
17 was told to.

18 So is it correct that you did not call U.S. Attorney B.J. Pak, as you were told to?

19 A Fifth and reiteration of the law enforcement privilege, out of an abundance
20 of caution. I also note that it looks like, on these notes, that the name is misspelled,
21 indication of a lack of care.

22 Q The B.J. Pak?

23 A No, the notes -- the title line.

24 Q Oh, your name is misspelled.

25 Mr. MacDougald. And the copy is cut off a little bit on the left margin.

1 [REDACTED] Okay.

2 BY [REDACTED]

3 Q Do you see the number one circled, and it says, "DNI briefing - no," with the
4 word "no" underlined, "evidence of ballot/data tampering in IC."

5 Is that an accurate statement of what you learned in the DNI briefing?

6 A Fifth. And I think it's subject to the same issues you were raising about the
7 classification.

8 BY [REDACTED]

9 Q Okay. If you look midway down through the page, it says: Based on the
10 two Georgia allegations of ballot shredding in Georgia, JC wants, once again, to send
11 letter saying (1) DOJ believes there is significant fraud across States, and (2) Georgia
12 Legislature should call itself into session and select new electors.

13 So was it still your position in that meeting on January 2nd that the Justice
14 Department should send a letter to Georgia officials saying that the Justice Department
15 believed there was significant fraud across States and that the Georgia legislature should
16 call itself into session?

17 A Fifth and reiteration of the law enforcement privilege, out of an abundance
18 of caution.

19 Q The next sentence states: This is entirely unacceptable.

20 Did either Mr. Rosen or Mr. Donoghue state to you that your proposal was
21 entirely unacceptable?

22 A Fifth and reiteration of the law enforcement objection, out of an abundance
23 of caution.

24 Q Okay. The next sentence says: DAG and I made it clear that the
25 Department will not send out such a letter as long as we are in charge of it.

1 Did, in fact, Mr. Rosen and Mr. Donoghue make it clear to you that the
2 Department of Justice would not send out such a letter as long as they were in charge of
3 the Department of Justice?

4 A Fifth and reiteration of the law enforcement objection, out of an abundance
5 of caution.

6 Q And then did you respond to their statement that they would not send out
7 such a letter as long as they're still in charge of the Department of Justice by stating that
8 the President had offered you the Acting Attorney General position?

9 A Fifth and reiteration of the law enforcement privilege objection and the
10 executive privilege objection.

11 Q Had the President of the United States, in fact, offered you the Acting
12 Attorney General position?

13 A Fifth and reiteration of the executive privilege objection, out of an
14 abundance of caution.

15 Q Okay. The last line is "another difficult meeting." Would you describe the
16 meeting you had with Mr. Rosen and Mr. Donoghue as a difficult meeting?

17 A Fifth and I think, again, that's very unclear, in terms of that note and --
18 Mr. MacDougald. Vague. It's vague.

19 BY [REDACTED]

20 Q Mr. Clark, then the next day, Sunday, January 3, 2021, did you meet with the
21 President of the United States and others at the White House to discuss the possibility of
22 you being appointed as Acting Attorney General?

23 A Fifth, reiteration of the law enforcement objection and the executive
24 privilege objection. I should also say that, you know, the attorney-client privilege is
25 another overarching privilege that we've invoked and, you know, fully applies here as well

1 to your question.

2 Q And when you're referring there to the attorney-client privilege, were you
3 referring to the President as being the client and you being the attorney?

4 A The Fifth.

5 [REDACTED] Maybe your counsel can sort of state the nature of the
6 attorney-client --

7 Mr. MacDougald. I can state what our position is. Our position is that the
8 client is the executive branch, the authority of which resides in the President of the
9 United States, who is the chief law enforcement officer.

10

BY [REDACTED]

11 Q Okay. If you can look at exhibit 25, this is Sunday, January 3, 2021, at 2:43
12 p.m. You wrote what appears to be a text saying, "Jeff," and I'm assuming that's Jeff
13 Rosen because you can see the next text is a response from Jeff Rosen. You wrote:
14 Jeff, just got off phone with Pat P. Please call me when you're ready for me to come up.
15 Thanks.

16 Does Pat P refer to Pat Philbin, deputy White House counsel?

17 A I'm sorry; was that a question?

18 Q Yes. Does Pat P there refer to Pat Philbin, the deputy White House
19 counsel?

20 A Fifth and reiteration of the executive privilege, out of an abundance of
21 caution.

22 Q What did you discuss with Mr. Philbin?

23 A Fifth and reiteration of the executive privilege, out of an abundance of
24 caution.

25 Q The next page, there's a text from you at, 4:53 p.m., where you wrote:

1 Meadows says 6:15. He will have someone work on logistics.

2 What did Mr. Meadows say to you?

3 A Fifth and reiteration of the executive privilege, out of an abundance of
4 caution, that objection.

5 Q And, if you'll look at exhibit 26, another calendar. It appears to be Jeff
6 Rosen's calendar. Toward the bottom, 3 o'clock p.m. to 4 o'clock p.m. January 3, 2021:
7 Meeting with J. Clark.

8 Did you, in fact, meet with Jeff Rosen at or around 3 p.m. on January 3rd?

9 A I'm sorry; [REDACTED] one more time. I was just finding the right thing --

10 Q Sure.

11 A -- because there's several days on there. Okay, go ahead.

12 Q January 3rd is the second one from the bottom. So January 3, 2021, 3
13 o'clock p.m. to 4 o'clock p.m. It says: Meeting with J. Clark.

14 So my question was, did you, in fact, end up meeting with Acting Attorney General
15 Jeffrey Rosen at or around 3 o'clock p.m. that day?

16 A Fifth and reiteration of the law enforcement privilege, out of an abundance
17 of caution.

18 Q What did you discuss with Acting Attorney General Jeff Rosen in that
19 meeting?

20 A Fifth and the reiteration, out of an abundance of caution, of the law
21 enforcement privilege objection.

22 Q And I know you've already stated that you have thoughts about The New
23 York Times, but, nonetheless, I'm going to bring up that New York Times reported that
24 during the meeting that we just mentioned you told Mr. Rosen that you had met with
25 President Trump over the weekend.

1 Is that reporting accurate?

2 A Fifth and -- and I'm sorry, one more time, reiterate that question before I
3 finalize it.

4 Q Sure. The New York Times reported that, during that meeting we were just
5 discussing, you told Mr. Rosen that you had met with President Trump over the weekend.
6 Is that, in fact, true?

7 A Fifth and reiteration of the executive privilege objection, out of an
8 abundance of caution. And, on The New York Times, you know, see I'm trying to hold
9 my tongue, although I'll note for you at this juncture that they did, as to one of their
10 stories, have to publish a retraction.

11 Q Was the retraction related to that particular statement, though?

12 A The Fifth I'll plead as to that. And I'll say that the stories and the
13 retractions speak for themselves, [REDACTED].

14 Q Did you say anything to Mr. Rosen about what actions you might take
15 regarding the 2020 election if you were, in fact, named Acting Attorney General?

16 A Fifth and reiteration of the law enforcement objection, out of an abundance
17 of caution.

18 Q Did you tell Mr. Rosen that he could remain as Deputy Attorney General if
19 you were named Acting Attorney General?

20 A Fifth and reiteration of the law enforcement objection, out of an abundance
21 of caution, and the executive privilege objection, out of an abundance of caution.

22 Q And what was Mr. Rosen's response to your suggestion that he could remain
23 as Deputy Attorney General if you were named Acting Attorney General?

24 A Fifth and reiteration of the law enforcement and executive privilege
25 objections, out of an abundance of caution.

1 Q Did Mr. Rosen tell you that he would not be fired by a subordinate?

2 A Fifth and reiteration of those same two objections, the executive privilege
3 objection and the law enforcement privilege objection, out of an abundance of caution.

4 Q Okay. Did you, in fact, participate in a meeting with the President of the
5 United States on January 3, 2021?

6 A Fifth and reiteration of the executive privilege objection and the law
7 enforcement privilege objection and the attorney privilege objection.

8 Q Okay. What was said at that meeting?

9 A The same response, [REDACTED] the Fifth, et cetera.

10 Q Did anyone at that meeting say that they would resign their position if the
11 President named you Acting Attorney General?

12 A The Fifth, the reiteration of the executive privilege objection and the law
13 enforcement privilege and the attorney-client privilege objections.

14 Q Did anyone say that other senior leaders of the Department of Justice would
15 also resign if you were appointed Acting Attorney General?

16 A That is essentially the same question and same answer.

17 Q Okay. Did Mr. Cipollone, the White House counsel, say that he would
18 resign if you were named Acting Attorney General?

19 A The Fifth and reiteration, out of an abundance of caution, of the executive
20 privilege, attorney-client privilege, and law enforcement privilege objections.

21 Q What did the President of the United States ultimately decide in that
22 meeting?

23 A The Fifth, reiteration of the executive privilege/law enforcement privilege
24 objections.

25 [REDACTED] Okay. I'll pause to see if any members have any questions.

1 BY [REDACTED]:

2 Q Mr. Clark, did you attend, either in person or virtually, any meetings at the
3 Willard Hotel in a so-called war room to discuss certification of electors and the joint
4 session of Congress on January 6th?

5 A Fifth.

6 Q Did you talk with anyone associated with the Trump campaign or their
7 attorneys about the joint session of Congress on January 6th?

8 A Fifth.

9 Q Did you have any communication with an attorney named John Eastman
10 between November 3, 2020, and January 6, 2021?

11 Mr. MacDougald. What were the dates?

12 [REDACTED] November 3rd, the election day, 2020, and January 6, 2021.

13 A The Fifth and reiteration of the objection about the authorization letter, such
14 as it is, to committees that you are not -- that the timeframes are in a mismatch.

15 BY [REDACTED]:

16 Q Did you review either of the two so-called Eastman memos? There's a
17 2-page version and a 6-page version. They're exhibits 27 and 28.

18 My question is, did you receive or review either of these memos before they were
19 ultimately made public?

20 A Fifth.

21 [REDACTED] Okay. And I think that's all I have right now. Do any members
22 have any questions?

23 Okay. So, with that, we will conclude, and we will keep the deposition open,
24 subject to the call of the chair.

25 And we can go off the record now. Don't go off the record yet. Okay.

1 Mr. Burnham. We object to keeping the deposition open. We would ask that
2 the deposition be closed now at the conclusion of your questions.

3 [REDACTED] So we will keep it open, but notify the chair of your request.

4 Mr. Burnham. Thank you.

5 The Witness. And, before we close, could we retire to that room that you
6 prepared with the binder, just to look at something before we close out?

7 [REDACTED] That's fine, as long as you leave the binder.

8 The Witness. Yes. We'll come back with the binder.

9 Mr. Burnham. That's fine.

10 The Witness. I assume [REDACTED] will escort us there and take us back. I
11 don't think it will take that long.

12 [REDACTED] That's fine. Anything else before we go off the record? Okay.
13 We are off the record.

14 [Whereupon, at 1:39, the deposition was recessed, subject to the call of the chair.]

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Certificate of Deponent/Interviewee

I have read the foregoing ____ pages, which contain the correct transcript of the answers made by me to the questions therein recorded.

Witness Name

Date